



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,948	07/23/2003	Satoshi Shimizu	3688ME-43	9913

22442 7590 10/27/2006

SHERIDAN ROSS PC
1560 BROADWAY
SUITE 1200
DENVER, CO 80202

EXAMINER

CHORBAJI, MONZER R

ART UNIT	PAPER NUMBER
----------	--------------

1744

DATE MAILED: 10/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/625,948

Applicant(s)

SHIMIZU ET AL.

Examiner

MONZER R. CHORBAJI

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/23/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

This general action is in response to the application filing date of 07/23/2003

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the vertically piercing opening must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
2. Corrected-drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Barnhart (U.S.P.N. 6,413,476).

Regarding claim 1, Barnhart discloses an incense burner (figure 2) that includes the following: a container (figure 2:6), a heating plate disposed beneath the container (figure 2:8 and figure 1:7), a heater (figure 1:7) and a supporting member (unlabeled structure in figure 2 that supports 8).

Regarding claims 2-8, Barnhart teaches the following: a first container having its bottom in contact with the heating plate (figure 2:6), a second container (figure 2:2) having its bottom spaced from the heating plate (figure 2:2 and 8), second container (figure 2:2) is mounted on a top cover (figure 6:2 and 28), second container has one leg (figure 5:2 and 27), heating plate is made of metal (col.3, lines 63-66), bottom part of

Art Unit: 1744

first container is made of metal (col.3, lines 65-67), second container is capable of being made of any material, second container has a handle part (figure 6:2 and 29) and a leg part that is provided in a direction of the handle part (figure 5:27 and figure 6:29).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 9, 11, 13-14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart (U.S.P.N. 6,413,476) as applied to claim 1 and further in view of Mitsuharu (EP 0 836 856 A2).

Regarding claim 16, Barnhart discloses an incense burner (figure 2) that includes a heater (figure 1:7) and a heating plate (figure 2:8). Barnhart fails to teach using PTC heater. Mitsuharu discloses the use of a PTC heater (figure 8B:16) having a top cover (figure 8B:17), a heater spring (figure 8B:18b) and a heater cover (figure 8B:5). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute Barnhart heater with Mitsuharu PTC heater since using such a heater results in optimal evaporation of the aromatic material as taught by Mitsuharu (page 3, col.3, lines 45-52).

Regarding claims 9, 11, 13-14 and 17-18, Barnhart teaches the following: first conduction plate (unlabeled bottom part of 6 in figure 2), fixing plate (figure 1:8) is capable of storing and positioning the heater, second conduction plate (unlabeled bottom part of 3 in figure 2), area of heater (unlabeled area of heater 7 in figure 3) is smaller than area of the heating plate (unlabeled bottom surface area of 2 in figure 2) and the heating plate has a peripheral part (figure 6:2 and 29). Barnhart fails to disclose the use of PTC heater. Mitsuharu discloses the use of a PTC heater (figure 8B:16) that includes the following: a top cover (figure 8B:17) having a peripheral part (unlabeled outer parameter of 17 in figure 8B), a heater spring (figure 8B:18b), and a heater cover (figure 8B:5) that has a bearing part (unlabeled outer parameter of 5 in figure 8B) that is capable of being rotated. Therefore, it would have been obvious to one of ordinary skill

Art Unit: 1744

in the art at the time the invention was made to substitute Barnhart heater with Mitsuharu PTC heater since using such a heater results in optimal evaporation of the aromatic material as taught by Mitsuharu (page 3, col.3, lines 45-52).

10. Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart (U.S.P.N. 6,413,476) view of Mitsuharu (EP 0 836 856 A2) as applied to claims 9, 11 and further in view of Hirano (U.S.P.N. 6,090,349).

Regarding claims 10 and 12, both Barnhart and Mitsuharu fail to teach the use of a rubber ring. Hirano teaches the use of a rubber ring (figure 1:23a) in a diffusing apparatus. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Barnhart device by including a rubber ring as taught by Hirano since a rubber ring has a vibration insulating properties (Hirano, col.2, lines 64-67) thereby preventing tipping of the device.

11. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart (U.S.P.N. 6,413,476) as applied to claim 1 and further in view of O'Neil (U.S.P.N. 4,739,928).

Barnhart fails to teach the use of an outer lid-guard having a plurality of openings such that the lower end extends downwardly beyond the surface of the heating plate. O'Neil discloses an outer lid-guard (figure 3:20) having a plurality of openings (figure 3:84) such that the lower end (figure 3:68) extends downwardly beyond the surface of the heating source (figure 5:16). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Barnhart device by including an outer-lid guard as taught by O'Neil in order to create an

Art Unit: 1744

additional adjustability means for controlling the diffusion rate of the fragrance (O'Neil, col.1, lines 61-66).

12. Claims 19-20, 22 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart (U.S.P.N. 6,413,476) in view of Patel et al (U.S.P.N. 5,647,052).

Regarding claim 19, Barnhart discloses an incense burner (figure 2) that includes the following: an upper frame (unlabeled inner structure that includes 6, 8, 9 and 11 of figures 2-3) on its top a heating body (figure 1:7), a light source (figure 3:11), a pillar part having a pillar encircling the light source (figure 3: 11 and 4), an outer frame encircling an outer side of the pillar part (figure 2:12), a lower frame unit (unlabeled lower frame in figure 2 that encloses fan 21), outer frame (figure 2:12) is sandwiched between upper frame (unlabeled inner structure that includes 6, 8, 9 and 11 of figures 2-3) and lower frame (unlabeled lower frame in figure 2 that encloses fan 21) and lower frame unit is fixed to the pillar part with fastening member (figure 1:25). Barnhart fails to teach the use of transparent or translucent material for constructing the incense burner. Patel teaches the use of transparent or translucent material (col.4, lines 63-66) in designing the outer frame of an air deodorizer. As a result, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Barnhart device by designing its structures with transparent or translucent material as taught by Patel since such material results in a deodorizer having decorative effects (Patel, col.4, lines 63-67).

Regarding claims 20, 22 and 31, Barnhart discloses an incense burner (figure 2) that includes the following: an upper frame (unlabeled inner structure that includes 6, 8, 9 and 11 of figures 2-3) on its top a heating body (figure 1:7) that is attached to the pillar part (figure 1:18 and 5), a pillar part having a pillar encircling the light source (figure 3: 11 and 4) and the control part (figure 1:19, 13-14 and 16-17) is held by the pillar part (figure 1:4) and the lower frame unit (unlabeled lower frame in figure 2 that encloses fan 21).

13. Claims 21 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart (U.S.P.N. 6,413,476) in view of Patel et al (U.S.P.N. 5,647,052) as applied to claim 20 and further in view of Borut et al (U.S.P.N. 6,389,739).

Regarding claims 21 and 23-24, Barnhart discloses an incense burner (figure 2) having an upper frame (unlabeled inner structure that includes 6, 8, 9 and 11 of figures 2-3) on its top a heating body (figure 1:7) that is attached to the pillar part (figure 1:18 and 5). However, both Barnhart and Patel fail to teach the following: a rotatable pillar part having a plurality of arm parts with attachment pieces on its top and each arm part is divided into two parts. Borut discloses a rotatable pillar part (figure 1:14 and 12) having a plurality of arm parts (figure 2:26) with attachment pieces on its top (figure 2:50) and each arm part (figure 2:26) is divided into two parts (foot part 28 and unlabeled horizontally extending part of 26 in figure 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Barnhart device by including a rotatable pillar part as taught by Borut so that

controlled and adjustable burn rates of the deodorant are achieved (Borut, col.1, lines 14-16).

14. Claims 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart (U.S.P.N. 6,413,476) in view of Patel et al (U.S.P.N. 5,647,052) as applied to claim 19 and further in view of McKsymick (U.S.P.N. 6,637,350).

Regarding claims 27-28, Barnhart discloses an incense burner (figure 2) having a control part (figure 4:19) and a pillar part (figure 3:4) attached to (figure 1:25) the lower frame unit (unlabeled lower frame in figure 2 that encloses fan 21), which has an under frame cover (unlabeled bottom surface of lower frame unit in figure 2). Both Barnhart and Patel fail to teach the use of a sliding part. McKsymick discloses the use of a sliding member (figure 9:70) having the following parts: first urging member (figure 8:80), push rod (figure 8:72) and a second urging member (figure 8:78). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Barnhart device by adding a sliding member as taught by McKsymick in order to prevent the inadvertent movement of the device (McKsymick, col.5, lines 1-8) resulting in having a stable incense burner.

15. Claims 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart (U.S.P.N. 6,413,476) in view of Borut et al (U.S.P.N. 6,389,739).

Regarding claims 25-26, Barnhart discloses an incense burner (figure 2) that includes the following: an upper frame unit (unlabeled inner structure that includes 6, 8, 9 and 11 of figures 2-3) having a heating body (figure 1:7), a pillar part having a pillar encircling the light source (figure 3: 11 and 4), an outer frame encircling an outer side of

Art Unit: 1744

the pillar part (figure 2:12), a lower frame unit (unlabeled lower frame in figure 2 that encloses fan 21), outer frame (figure 2:12) is sandwiched between a peripheral part of the upper frame unit (unlabeled inner structure that includes 6, 8, 9 and 11 of figures 2-3) and a peripheral part of the lower frame unit (unlabeled lower frame in figure 2 that encloses fan 21) and lower frame unit is combined with the pillar part by a fastening member (figure 1:25). Barnhart fails to teach the following: a rotatable pillar part having a plurality of arm parts with attachment pieces on its top and each arm part is divided into two parts. Borut discloses a rotatable pillar part (figure 1:14 and 12) having a plurality of arm parts (figure 2:26) with bent attachment pieces on its top (figure 2:50) and each arm part (figure 2:26) is divided into two parts (foot part 28 and unlabeled horizontally extending part of 26 in figure 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Barnhart device by including a rotatable pillar part as taught by Borut so that controlled and adjustable burn rates of the deodorant are achieved (Borut, col.1, lines 14-16).

16. Claims 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart (U.S.P.N. 6,413,476) in view of McKsymick (U.S.P.N. 6,637,350).

Regarding claims 29-30, Barnhart discloses an incense burner (figure 2) having a heating body (figure 1:7), a switch (figure 4:19) and a housing having opening on its bottom (figure 1:12). Barnhart fails to teach the use of a sliding part. McKsymick discloses the use of a sliding member (figure 9:70) having the following parts: slider main body (figure 9:76), first urging member (figure 8:80), push rod (figure 8:72), a second urging member (figure 8:78) and a slider stopper (figure 8:84). Therefore, it

Art Unit: 1744

would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Barnhart device by adding a sliding member as taught by McKsymick in order to prevent the inadvertent movement of the device (McKsymick, col.5, lines 1-8) resulting in having a stable incense burner.

Conclusion

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R. CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 9:00-5:30.

18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, GLADYS J. CORCORAN can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MR


GLADYS JP CORCORAN
SUPERVISORY PATENT EXAMINER